IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 307 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

POWER BUILD LTD.,

Appearance:

MR MANISH R BHATT for Petitioner

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 08/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of Revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench "B" has referred following question of law for the opinion of this Court relating to Assessment Year 1981-82:-

"Whether, the Appellate Tribunal is right in law and on facts in directing depreciation to be given at the rate of 5% on the canteen building as against depreciation at 2.5% allowed by the Income-tax Officer?"

During the course of assessment proceedings for the Assessment Year 1981-82, the assessee contended that depreciation on canteen building should be allowed at the rate of 5% as it should be treated as a factory building. The Income Tax Officer granted deduction at the rate of 2.5%. The Commissioner of Income Tax (Appeals) however, directed the Income Tax Officer to compute depreciation at the rate of 5% on canteen building. The Appellate Tribunal has confirmed the order of the Commissioner of Income Tax following its earlier decision in assessee's own case, giving rise to the present reference.

Heard the learned Counsel for the Revenue. Though served, none appears on behalf of the respondent. The question whether the assessee is entitled to get higher depreciation on canteen building is covered by the decision rendered in the case of this very assessee i.e. Commissioner of Income Tax Vs. Power Build Ltd., in ITR No.335 of 1984, decided on December 20, 1999, by a Division Bench comprising Hon'ble Mr.Justice B.C. Patel and Hon'ble Mr.Justice K.M.Mehta, wherein after referring to the judgement of the Madras High Court in CIT Vs. Engine Valves Ltd., reported in 126 ITR 347, the Division Bench has taken the view that canteen building is entitled to depreciation as part and parcel of factory building.

In view of the above referred to decision of this Court, we are of the opinion that the Tribunal was right in law and on facts in directing to grant depreciation at the rate of 5% on the canteen building as against depreciation at the rate of 2.5% allowed by the Income Tax Officer. The reference is therefore answered in the affirmative i.e. in favour of the assessee and against the Revenue. The reference stands disposed of accordingly with no order as to costs.

(J.M.Panchal,J.) (M.S.Shah,J.)

*/Mohandas